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REMARKS

Claims 1-16, 18-31, 33-42, and 44-50 are currently pending in the subject application and are presently under consideration. Claims 1, 8, 23, 35, and 46 have been amended herein to further emphasize exemplary features of applicant's claimed invention, and claims 10-13, 19, 25-28, and 37-39 have been amended to cure a minor informality. A version of all pending claims is presented on pages 2-9 of this Reply. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objection of Claims 10-13, 19, 25-28, and 37-39

Claims 10-13, 19, 25-28, and 37-39 are objected to because of a minor informality. The objection should be withdrawn for the following reason. Claims 10-13, 19, 25-28, and 37-39 have been amended herein to comport with the Examiner's recommendation. Accordingly, this rejection should be withdrawn.

II. Rejection of Claims 1-16, 18-22, and 46-50 Under 35 U.S.C. §101

Claims 1-16, 18-22, and 46-50 stand rejected under 35 U.S.C. §101 because it is alleged the claimed invention is directed to non-statutory matter. This rejection should be withdrawn for at least the following reasons. Independent claims 1, 8 and 46 have been amended herein to overcome the subject rejection in accordance with the Examiner's recommendation. Accordingly, withdrawal of this rejection with respect to independent claims 1, 8 and 46 (and claims that depend there from) is requested.

It should be noted however, that while applicant's representative has amended the subject independent claims to expedite fruitful prosecution of applicant's claimed invention, it is nevertheless believed that the rejection under 35 U.S.C. §101 of these particular claims is erroneous in view of Federal Circuit opinion in *In re Alappat*, 33 F.3d 1526, 31 U.S.P.Q.2D (BNA) 1545 (Fed. Cir. 1994), *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999) and *State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 47 USPQ2d 1596 (Fed.Cir.1998) wherein the court has made it clear that the only requirement for patentability under 35 U.S.C. §101 is that the claims recite a useful, concrete, tangible result. It is submitted that the

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subject independent claims, prior to amendment, recited such useful, concrete and tangible results, viz., *a client side HTTP stack software component that processes requests, and a thread pool comprising a plurality of threads that process tasks associated with at least one client side request.*

Moreover, as the Examiner acknowledges the subject independent claims recite a software component implemented entirely in software. The recent Federal Court decision in *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325 (Fed. Cir. 2005) indicates that provided the claimed subject matter does not fall within the ambit of prohibited mathematical concept, law of nature or abstract idea, that “[w]ithout question, *software code alone qualifies as an invention eligible for patenting under these categories*, at least as processes.” *Eolas Techs., Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1338 (Fed. Cir. 2005) (emphasis added). The Examiner in the Response to Arguments section of the Final Office Action dated January 23, 2006, contends that a software program is only statutory subject matter when drafted as a process or method. Applicant’s representative avers to the contrary. The Federal Court’s decision does not state that software code can only be considered statutory subject matter if and only if software code is claimed as a process/method, but rather the decision provides that software code is eligible for patenting *at the very least as a process*. The court in *Eolas*, contrary to the Examiner’s assertion, does not preclude software code embodied in a machine, manufacture or composition of matter from falling within the purview of patentable subject matter. It is thus applicant’s representative’s contention that claims 1, 8 and 46, as originally presented, fall squarely within the ambit of *Eolas* and thus are eligible for patenting under 35 U.S.C. §101 and that the rejection of these particular claims is errant.

III. Rejection of Claim 1 Under 35 U.S.C. §103(a)

Claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* (US 6,687,729). This rejection should be withdrawn for at least the following reasons. Sievert *et al.* does not teach or suggest all aspects recited in the subject claim.

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To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) ***must teach or suggest all the claim limitations***. See MPEP §706.02(j). The ***teaching or suggestion to make the claimed combination*** and the reasonable expectation of success ***must be found in the prior art and not based on the Applicant's disclosure***. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

Applicant's claimed subject matter relates to methods and systems for implementing a client side HTTP stack in a computer system. The client side HTTP stack provides high performance and scalability through utilization of multithreading and completion ports within the client side HTTP layer in association with sockets and a thread pool. Prior to applicant's claimed subject matter, the client side HTTP stack had been implemented using one socket and one thread which had provided useful capability for a single user accessing the Internet *via* a browser application. With the advent of business-to-business and other more recent client side applications that create numerous requests each of which requiring timely processing, the single thread, single socket architecture of yesteryear has been found to be incapable of servicing the plethora of requests generated by such applications in a timely fashion. To this end, independent claim 1, as amended, recites: ***a client side state machine selectively associated with the at least one request, the client side state machine selected based at least in part on each differentiable task***. Sievert *et al.* does not teach or suggest these aspects of the invention as claimed.

Sievert *et al.* relates to managing a pool of threads for executing queued items of work. The Examiner contends that the salient features of applicant's claimed invention can be located at col. 3, lines 34-64. Applicant's representative disagrees. The cited passage provides a single work queue that can be in one of three states: stopped, suspended and running. The invention as claimed in contrast provides a client side state

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machine that is selectively associated with a client side request wherein the state machine that is associated with the client side request is based at least in part on one or more differentiable tasks that comprise the client side request. The clear distinction between the invention as claimed and the cited document lies in the fact that applicant's claimed invention selectively associates state machines to client side requests based on one or more tasks that are incorporated within the received client side request. The cited document in contrast associates a solitary state machine to a work queue irrespective of the tasks that are contained within the work queue. Thus, it is evident that the state machine disclosed in the cited document is only associated with one work queue not with the tasks that are contained within the work queue. It is thus submitted that Sievert *et al.* and the invention as claimed are patentably distinct. Accordingly, withdrawal of this rejection with respect to independent claim is respectfully requested.

IV. Rejection of Claim 2 Under 35 U.S.C. §103(a)

Claim 2 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Jones *et al.* (US 6,003,061). Withdrawal of this rejection is requested for at least the following reasons. Claim 2 depends from independent claim 1, and for reasons stated *supra*, Jones *et al.* does not remedy the deficiencies with respect to Sievert *et al.* Accordingly, this rejection should be withdrawn.

VI. Rejection of Claim 3 Under 35 U.S.C. §103(a)

Claim 3 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Okano *et al.* (US 6,725,253). This rejection should be withdrawn for at least the following reasons. Claim 3 depends from independent claim 1, and Okano *et al.* does not cure the aforementioned deficiencies with respect to the primary document and the subject independent claim. Accordingly, withdrawal of this rejection is requested.

VII. Rejection of Claim 4 Under 35 U.S.C. §103(a)

Claim 4 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.* (US 6,493,749). Withdrawal of this rejection is

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requested for at least the following reasons. Claim 4 depends from independent claim 1, and Paxhia *et al.* does not make up for the elucidated deficiencies with respect to Sievert *et al.* Withdrawal of this rejection is therefore requested.

VIII. Rejection of Claim 5 Under 35 U.S.C. §103(a)

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.* as applied to claim 4 above, and further in view of Jones *et al.* This rejection should be withdrawn for at least the following reasons. Claim 5 depends from independent claim 1 and Paxhia *et al.* and Jones *et al.* do not make up the aforementioned deficiencies presented in Sievert *et al.* Accordingly, this rejection should be withdrawn.

IX. Rejection of Claim 6 Under 35 U.S.C. §103(a)

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.* in view of Jones *et al.* as applied to claim 5 above, and further in view of Okano *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claim 6 depends from independent claim 1, and Paxhia *et al.*, Jones *et al.*, and Okano *et al.* do not cure the aforementioned deficiencies with respect to Sievert *et al.* Withdrawal of this rejection is therefore requested.

X. Rejection of Claim 7 Under 35 U.S.C. §103(a)

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of Paxhia *et al.* as applied to claim 4 above, and further in view of Okano *et al.* This rejection should be withdrawn in light of the fact that claim 7 depends from independent claim 1, and the secondary and tertiary documents do not cure the above stated deficiencies presented in connection with the primary document. Accordingly, this rejection should be withdrawn.

XI. Rejection of Claims 8, 23, 35, and 46 Under 35 U.S.C. §103(a)

Claims 8, 23, 35, and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Sievert *et al.* in view of the IBM Technical Disclosure Bulletin

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("Control of Dynamic Thread Pools for Concurrent Remote Procedure Calls"). This rejection should be withdrawn for at least the following reasons. The IBM Technical Disclosure Bulletin fails to teach or suggest all aspects set forth in the subject claims.

Independent claims 8, 23, 35, and 46, as amended, recite similar limitations, namely: *a state machine associated with each of the M requests based at least on one or more tasks included as a part of each of the M requests*. It is apparent that applicant's claimed invention includes a state machine that is associated with a client side request, wherein the association of the state machine is based on one or more tasks that comprise the client side request. The IBM Technical Disclosure Bulletin fails to teach or suggest these exemplary features of the invention as claimed.

The IBM Technical Disclosure Bulletin discloses an algorithm that controls the creation and destruction of executor threads of an application server, wherein the algorithm creates only a fraction of the threads requested by the application server at initialization time and varies the number of threads when the load on the server changes. The cited document however is silent regarding associating state machines with each of the M requests based at least in part on one or more tasks that form each of the M requests. Accordingly, withdrawal of this rejection with respect to independent claims 8, 23, 35 and 46 (and associated dependent claims) is requested.

XII. Rejection of Claims 9-13, 17-19, 24-28, 32-34, 36-39, 44-45, and 47 Under 35 U.S.C. §103(a)

Claims 9-13, 17-19, 24-28, 32-34, 36-39, 44-45, and 47 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* The rejection should be withdrawn for at least the following reasons. Claims 9-13, 17-19, 24-28, 32-34, 36-39, 44-45, and 47 depend from independent claims 8, 23, 35 and 46 respectively, and Sievert *et al.* fails to cure the aforementioned deficiencies of the IBM Technical Disclosure Bulletin. Accordingly, this rejection should be withdrawn.

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XIII. Rejection of Claims 14, 29, 40, and 48 Under 35 U.S.C. §103(a)

Claims 14, 29, 40, and 48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* as applied to claims 13, 28, 39, and 47 above respectively, and further in view of Jones *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claims 14, 29, 40, and 48 depend from independent claims 8, 23, 35 and 46 respectively, and the secondary and tertiary documents do not cure the aforementioned deficiencies with respect to the primary document. Accordingly, this rejection should be withdrawn.

XIV. Rejection of Claims 15, 30, and 41 Under 35 U.S.C. §103(a)

Claims 15, 30, and 41 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* in view of Jones *et al.* as applied to claims 14, 29, and 40 above respectively, and further in view of Okano *et al.* This rejection should be withdrawn for at least the following reasons. Claims 15, 30, and 41 depend from independent claims 8, 23 and 35 respectively, and Sievert *et al.*, Jones *et al.* and Okano *et al.*, alone or in combination, do not rectify the deficiencies present in the primary document. Accordingly, this rejection should be withdrawn.

XV. Rejection of Claims 16, 31, and 42 Under 35 U.S.C. §103(a)

Claims 16, 31, and 42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* in view of Jones *et al.* in view of Okano *et al.* as applied to claims 15, 30, and 41 above respectively, and further in view of Paxhia *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claims 16, 31, and 42 depend from independent claims 8, 23 and 35 respectively, and the deficiencies presented in the primary document are not cured by Sievert *et al.*, Jones *et al.* and Okano *et al.* Accordingly, withdrawal of this rejection is requested.

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XVI. Rejection of Claim 20 Under 35 U.S.C. §103(a)

Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Jones *et al.* This rejection should be withdrawn for at least the following reasons. Claim 20 depends from independent claim 8, and the secondary document does not overcome the deficiencies with respect to the primary document. Accordingly, this rejection should be withdrawn.

XVII. Rejection of Claim 21 Under 35 U.S.C. §103(a)

Claim 21 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Okano *et al.* This rejection should be withdrawn for at least the following reasons. Claim 21 depends from independent claim 8, and Okano *et al.* does not remedy the deficiencies with respect to the primary document. Accordingly, withdrawal of this rejection is requested.

XVIII. Rejection of Claim 22 Under 35 U.S.C. §103(a)

Claim 22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Paxhia *et al.* This rejection should be withdrawn for at least the following reasons. Claim 22 depends from independent claim 8, and the secondary document does not rectify the aforementioned deficiencies with respect to the primary document. Accordingly, this rejection should be withdrawn.

XIX. Rejection of Claim 49 Under 35 U.S.C. §103(a)

Claim 49 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* as applied to claim 47 above, and further in view of Okano *et al.* Withdrawal of this rejection is requested for at least the following reasons. Claim 49 depends from independent claim 46, and the secondary and tertiary documents do not rectify the aforementioned deficiencies with respect to the primary document. Accordingly, withdrawal of this rejection is requested.

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XX. Rejection of Claim 50 Under 35 U.S.C. §103(a)

Claim 50 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the IBM Technical Disclosure Bulletin in view of Sievert *et al.* as applied to claim 47 above, and further in view of Paxhia *et al.* This rejection should be withdrawn for at least the following reasons. Claim 50 depends from independent claim 46, and the secondary and tertiary documents, alone or in combination, do not rectify the aforementioned deficiencies with respect to the IBM Technical Disclosure Bulletin. Accordingly, withdrawal of this rejection is requested.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP170US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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